

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

|                               |   |                         |
|-------------------------------|---|-------------------------|
| DAVID QUINTERO,               | ) | Case No. 10-5419 SC     |
|                               | ) |                         |
| Plaintiff,                    | ) | ORDER DENYING MOTION TO |
|                               | ) | <u>TRANSFER VENUE</u>   |
| v.                            | ) |                         |
|                               | ) |                         |
| EXMARK MANUFACTURING COMPANY, | ) |                         |
| INC., a corporation, and THE  | ) |                         |
| TORO COMPANY, a corporation,  | ) |                         |
|                               | ) |                         |
| Defendants.                   | ) |                         |
|                               | ) |                         |

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**I. INTRODUCTION**

Before the Court is a fully briefed Motion by Defendants Exmark Manufacturing Company, Inc. ("Exmark") and The Toro Company ("Toro") (collectively, "Defendants") to transfer venue to the Eastern District of California, Sacramento Division, under 28 U.S.C. § 1404(a). ECF Nos. 6 ("Mot."), 10 ("Opp'n"), 12 ("Reply"). For the following reasons, the Court DENIES Defendants' Motion.

**II. BACKGROUND**

Plaintiff David Quintero ("Quintero") filed this personal injury action in the Superior Court of California, County of Alameda, on November 15, 2010. ECF No. 1 ("Notice of Removal") Ex. A ("Compl."). Plaintiff claims he was injured while operating a riding lawnmower allegedly designed, manufactured, and sold by

1 Defendants.<sup>1</sup> Id. On November 30, 2010, Defendants removed to  
2 federal court on the basis of diversity jurisdiction. See Notice  
3 of Removal. Defendants alleged in their Notice of Removal that at  
4 the time of filing, Plaintiff was a California resident and  
5 citizen, Exmark was a Nebraska corporation with its principal place  
6 of business in Nebraska, and Toro was a Delaware corporation with  
7 its principal place of business in Minnesota. Id. ¶¶ 4-5.

8 Now Defendants seek to transfer the case to the Sacramento  
9 Division of the Eastern District of California. Defendants allege  
10 that Plaintiff injured his foot while operating the lawnmower as a  
11 part-time landscaper for the N.A. Chaderjian Youth Correctional  
12 Facility ("the correctional facility") in Stockton, California.  
13 Mot. at 1. Defendants argue that transfer to the Eastern District  
14 is appropriate because the injury occurred in Stockton, which lies  
15 within the Eastern District, and because pertinent witnesses to the  
16 incident and Plaintiff's subsequent medical treatment live in  
17 Stockton. Id. at 2-3.

18 Plaintiff opposes the motion. Plaintiff argues that his  
19 choice of forum is given substantial weight, and that convenience  
20 and justice do not favor transfer of the action. Opp'n at 2.

### 21 22 **III. LEGAL STANDARD**

23 "For the convenience of parties and witnesses, in the interest  
24 of justice, a district court may transfer any civil matter to any  
25 other district or division where it might have been brought." 28  
26 U.S.C. § 1404(a). The purpose of § 1404(a) is to "prevent the

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27  
28 <sup>1</sup> The relationship between Exmark and Toro, and what roles they  
performed in the design, manufacture, and sale of the lawnmower,  
are not clear from Plaintiff's Complaint.

1 waste of time, energy, and money and to protect litigants,  
2 witnesses and the public against unnecessary inconvenience and  
3 expense." Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (internal  
4 quotation marks omitted). "A motion for transfer lies within the  
5 broad discretion of the district court, and must be determined on  
6 an individualized basis." Foster v. Nationwide Mut. Ins. Co., No.  
7 07-4928, 2007 WL 4410408, at \*1 (N.D. Cal. Dec. 14, 2007) (citing  
8 Jones v. GNC Franchising, Inc., 211 F.3d 495, 498 (9th Cir. 2000)).

9 To support a motion for transfer, the moving party must  
10 establish that venue is proper in the transferor district, the  
11 transferee district is one where the action might have been  
12 brought, and the transfer will serve the convenience of the parties  
13 and witnesses and will promote the interests of justice. Foster,  
14 2007 WL 4410408 at \*2. In determining this issue, courts look to  
15 the following factors: (1) plaintiff's choice of forum; (2)  
16 convenience of the parties and witnesses; (3) ease of access to the  
17 evidence; (4) familiarity of each forum with the applicable law;  
18 (5) feasibility of consolidation with other claims; (6) any local  
19 interest in the controversy; and (7) the relative court congestion  
20 and time to trial in each forum. See id.

#### 21 22 **IV. DISCUSSION**

23 There is no dispute between the parties that venue is proper  
24 in both the Northern District and the Eastern District. Thus,  
25 resolution of this matter hinges on whether the above-mentioned  
26 factors favor transfer to serve the interests of convenience and  
27 justice.

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**A. Plaintiff's Choice of Forum**

Plaintiff states a strong preference for the Northern District. Opp'n at 2. Defendants argue that Plaintiff's choice of forum should be given little weight because "there is no connection between the Northern District and the underlying incident." Reply at 3. Defendants argue that because the incident occurred in Stockton, and because Plaintiff has recently rented a room in Sacramento and intends to look for work in Sacramento, there is insufficient nexus for the Court to give Plaintiff's choice of forum substantial weight. Plaintiff alleges that his permanent residence is in Vallejo, where his mother lives. Hill Decl. ¶ 2.<sup>2</sup>

The Court finds that Plaintiff's decision to move to Sacramento after filing this action does not affect the weight given to his forum preference. Accordingly, this factor favors Plaintiff.

**B. Convenience of the Parties and Witnesses**

Defendants argue that all the witnesses to the injury, as well as all the witnesses who treated Plaintiff immediately after the injury, reside in Stockton. Reply at 4. Defendants identify thirteen such witnesses, including the individuals who called for medical personnel, three nurses who assisted with initial treatment, and several correctional center workers who subsequently investigated the incident. *Id.* at 4-5. Plaintiff counters that it is extremely unlikely that all of these witnesses will testify at trial, that there are no eyewitnesses to the actual injury, and that most of the named witnesses "simply observed [Plaintiff's]

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<sup>2</sup> John E. Hill ("Hill"), counsel for Plaintiff, filed a declaration in opposition to Defendants' Motion. ECF No. 11.

1 injury after it had occurred." Hill Decl. ¶ 3. Plaintiff also  
2 alleges that Plaintiff's three treating physicians all reside in  
3 the Northern District, and that San Francisco is a more convenient  
4 forum for any out-of-state witnesses because there are more flights  
5 to and from San Francisco than Sacramento. Id. ¶ 6, Opp'n at 2.

6 The Court takes judicial notice of the fact that Stockton is  
7 roughly eighty miles from San Francisco and fifty miles from  
8 Sacramento. As such, any inconvenience to any Stockton witness is  
9 limited to an additional thirty miles' of travel each way. The  
10 Court agrees with Plaintiff that it is highly unlikely all or even  
11 most of the potential witnesses that Defendants list will testify  
12 at trial. For instance, it is highly unlikely that the three  
13 nurses who treated Plaintiff and his doctor would all testify at  
14 trial. Because the inconvenience to the Stockton witnesses is  
15 minimal and offset by the inconvenience to Plaintiff's Northern  
16 District witnesses if the Court transferred the action, the Court  
17 finds that this factor favors neither party.

18 **C. Ease of Access to the Evidence**

19 Defendants allege that the riding lawnmower that allegedly  
20 injured Plaintiff is currently in the Eastern District, as are "all  
21 pertinent records and documents." Mot. at 7. The Court finds that  
22 this evidence could easily be transported to the Northern District,  
23 and so this factor favors neither party.

24 **D. Local Interest in the Controversy**

25 Defendants argue that the Eastern District has an interest in  
26 adjudicating disputes arising from accidents occurring within its  
27 geographic boundaries, and the Northern District has no interest in  
28 presiding over this lawsuit. Id. at 8. The Court disagrees; the

1 Northern District has an interest in offering its residents a  
2 convenient forum for their legal disputes. As such, this factor  
3 favors neither party.

4 **E. Other Factors**

5 Defendants admit that the other factors -- feasibility of  
6 consolidation, familiarity of each forum with applicable law, and  
7 relative court congestion and time to trial -- are inapplicable to  
8 this action or favor neither party. See id.

9 The Court finds that no factors favor transfer of this action  
10 to the Eastern District. Furthermore, this action was filed five  
11 months ago, and the parties have yet to appear in Court for a  
12 status conference. Transfer would undoubtedly further delay  
13 proceedings. Because transfer to the Eastern District would  
14 neither serve the interests of justice nor the convenience of the  
15 parties, the Court DENIES Defendants' Motion.

16  
17 **V. CONCLUSION**

18 For the foregoing reasons, the Court DENIES Defendants Exmark  
19 Manufacturing Company, Inc. and The Toro Company's Motion to  
20 Transfer Venue.

21  
22 IT IS SO ORDERED.

23  
24 Dated: March 10, 2010

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UNITED STATES DISTRICT JUDGE